

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR DECEMBER 5, 2019 AT 8:30 A.M.

These are the tentative rulings for the **THURSDAY, DECEMBER 5, 2019 at 8:30 A.M.**, civil law and motion calendar. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by **4:00 p.m., WEDNESDAY, DECEMBER 4, 2019**. Notice of request for argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date and approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: Effective July 1, 2014, all telephonic appearances will be governed by Placer Court Local Rule 20.8. More information is available at the court's website: www.placer.courts.ca.gov.

Except as otherwise noted, these tentative rulings are issued by the **HONORABLE CHARLES D. WACHOB** and if oral argument is requested, oral argument will be heard at **8:30 a.m.** in **DEPARTMENT 42**, located at 10820 Justice Center Drive, Roseville, California.

1. M-CV-0068564 WELLS FARGO v. BOYD, SHAWN

Plaintiff's motion to deem requests for admission admitted is granted. The matters encompassed in plaintiff's requests for admission, set one, are deemed admitted.

2. M-CV-0072998 DISCOVER BANK v. NANCHY, ERISLDA

Plaintiff's motion for judgment on the pleadings is granted without leave to amend. A motion for judgment on the pleadings, when brought by a plaintiff, may be granted where the complaint states facts sufficient to constitute a cause of action and the answer does not state facts sufficient to constitute a defense to the complaint. (Code of Civil Procedure section 438(c)(1)(A).) "[J]udgment on the pleadings must be denied where there are material factual issues that require evidentiary resolution." (*Schabarum v. California Legislature* (1998) 60 Cal.App.4th 1205, 1216.) A review of the complaint shows that each of the common counts causes of action are sufficiently pleaded. The same is not true for defendant's answer, which essentially admits to the indebtedness in paragraph 5. Since defendant is not able to plead facts supporting a defense to the common counts claims, the motion is granted without leave to amend.

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Judgment is entered in favor of plaintiff in the amount \$11,710.74, which accounts for \$11,211.24 in damages and \$499.50 in costs. (Code of Civil Procedure section 438(h)(3).)

3. S-CV-0016410 WALLACE, RICHARD v. MONIER LIFETILE

The appearance of the parties are required at **8:30 a.m. in Department 3**, located at the **Historic Auburn Courthouse**, before the **Honorable Michael W. Jones** for the hearings on defendant Monier's objections to the referee's recommendation no. 9 and recommendation regarding Tranche 1 and 2.

4. S-CV-0032090 INVEST. RETRIEVERS v. TRAN, LOUIE

Plaintiff's motion for charging order as to Natural Effect, LLC is denied. The current motion suffers from procedural and substantive deficiencies. First, it does not appear that the motion was properly served on all interested parties. The proof of service shows the moving papers were served by mail on Evan Lee and Natural Effects, LLC. Non-parties should generally be personally served with the motion. (Ahart, Cal. Practice Guide: Enforcing Judgments and Debts (The Rutter Group 2019) ¶6:1471; see c.f. *In re Raiton* (9th Cir. BAP 1992) 139 BR 931, 934-935.) Further, plaintiff does not show the registered corporate agent for service for Natural Effects, LLC was properly served. Second, plaintiff has not made a sufficient showing establishing defendants' interests in Natural Effects, LLC. The Statement of Information for Natural Effects, LLC does not list any of the defendants as members or managers of the LLC. Plaintiff has failed to make a sufficient showing to support its request for a charging order. For these reasons, the motion is denied.

5. S-CV-0039294 McDONOUGH, JENNIFER v. ASCHEHOUG, GABRIELLE

The motion to deposit funds in blocked account is dropped from the calendar as no moving papers were filed with the court.

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6. S-CV-0041128 ALVAREZ, DAVID v. CIBOEUREKA

Jacob Flesher and Wendy Green's Motion to be Relieved as Counsel of Record for defendant Alan Stevens

The motion is granted. (see *Estate of Falco v. Decker* (1987) 188 Cal.App.3d 1004, 1014.) Jacob Flesher and Wendy Green shall be relieved as counsel of record effective upon the filing of the proof of service of the signed order after hearing on defendant Alan Stevens.

Jacob Flesher and Wendy Green's Motion to be Relieved as Counsel of Record for defendant Chad Lanza

The motion is granted. (see *Estate of Falco v. Decker* (1987) 188 Cal.App.3d 1004, 1014.) Jacob Flesher and Wendy Green shall be relieved as counsel of record effective upon the filing of the proof of service of the signed order after hearing on defendant Chad Lanza.

7. S-CV-0041240 DICKERSON, MICHELE v. AMER. RESID. SERV.

Plaintiffs' Motion to Compel Further Responses to Special Interrogatories and Sanctions

The motion, including the requests for issue sanctions and monetary sanctions, is denied. Plaintiffs' current request suffers from significant procedural defects that prevent the court from considering the substance of the motion. First, plaintiff has not provided defendant with sufficient notice of the motion under Code of Civil Procedure section 1005. This section requires all written motions to be filed and served 16 court days prior to the hearing date. The hearing date must be extended an additional 5 calendar days if the notice is served by mail. (Code of Civil Procedure section 1005(b).) Plaintiffs' proof of service shows defendant was served by mail on November 8, 2019 for a December 5, 2019 hearing date. This only provided defendant with 16 court days notice, failing to include the additional 5 calendar days necessary since the motion was served by mail.

Second, plaintiffs have failed to bring the motion within the discovery cutoff timelines. Code of Civil Procedure section 2024.020 requires all discovery motions to be heard on or before the 15th day prior to the initial trial date. Trial in this matter is currently set for December 16, 2019. Under Section

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2024.020(a), any discovery motion needed to be set for hearing before December 2, 2019.

Finally, plaintiffs have not made a sufficient showing regarding their meet and confer attempts. All motions seeking to compel further responses to interrogatories require a meet and confer declaration showing that a reasonable and good faith attempt was made to informally resolve the motion. (Code of Civil Procedure sections 2030.300(b), 2016.040.) “This rule is designed ‘to encourage the parties to work out their differences informally so as to avoid the necessity for a formal order’ [Citation.] This, in turn, will lessen the burden on the court and reduce the unnecessary expenditure of resources by litigants through promotion of informal, extrajudicial resolution of discovery disputes. [Citations.]” (*Townsend v. Superior Court* (1998) 61 Cal.App.4th 1431, 1435.) Here, plaintiffs contend the exchange of a single letter correspondence and one telephone call demonstrates sufficient meet and confer. Not so. The declarations submitted by the parties show that there had been a significant change in the status of discovery after they stipulated to defendant’s liability, leaving damages as the only remaining issue. Counsel for both parties were still trying to resolve the relevance of the written discovery in September 2019. Plaintiffs’ one-sided written correspondence and single phone call do not demonstrate a reasonable discussion between the parties to identify the outstanding disputes let alone to resolve them. Plaintiffs also fail to demonstrate an unwillingness on defendant’s part to resolve the matter. Thus, they have failed to establish sufficient meet and confer attempts were made prior to bringing this motion. For these reasons, the motion is denied in its entirety.

8. S-CV-0041478 CARL, MARLIN B. v. CARL, MARLIN LEE

Defendant’s motion for leave to file first amended answer is granted under Code of Civil Procedure sections 473(a)(1) and 576. Defendant shall file and serve his first amended answer by December 20, 2019.

9. S-CV-0042324 POLUCHA, DAWN v. DUNN, JAMES

Plaintiff’s motion to amend the complaint is continued to Thursday, January 16, 2020 at 8:30 a.m. in Department 42 at the request of the parties.

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10. S-CV-0042340 MORENO, GABRIEL v. CASAS, JUAN

Defendants' demurrer to the first amended complaint is overruled. A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (Code of Civil Procedure section 430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) The allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The first amended complaint, when read as a whole, alleges sufficient facts to support claims for fraud and professional negligence against the moving defendants.

Defendants shall file and serve their answer or general denial by December 20, 2019.

11. S-CV-0042490 ESPENSHADE, JENNIFER v. BILL EADS RV'S INC.

Defendants' motion for leave to file a cross-complaint is continued to Thursday, December 12, 2019 at 8:30 a.m. in Department 42. The moving papers do not include a copy of the proposed cross-complaint. Defendants must provide a copy of the proposed pleading prior to the court granting leave. Defendants may file a supplemental declaration, which includes a copy of the proposed cross-complaint, by 12:00 p.m. on December 9, 2019.

12. S-CV-0043004 CASTRO, RUBEN v. STASTNY, FRANK

Plaintiff Graciela Castro's motion to set aside dismissal is granted as the moving plaintiff has sufficiently shown mistake and excusable neglect under Code of Civil Procedures 473(b).

The dismissal entered on September 9, 2019 is vacated solely as to plaintiff Graciela Castro. The dismissal shall remain as entered as to plaintiff Ruben Castro.

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13. S-CV-0043035 CONCERNED CITIZENS v. COUNTY OF PLACER

Intervenor Mercy Housing California's Motion to Intervene

The intervenor's motion is granted under Code of Civil Procedure section 387.

The intervenor shall file and serve its complaint in intervention by December 20, 2019.

Status Conference

The appearances of the parties are required for the status conference. The parties shall be prepared to discuss the filing of responsive pleadings along with the timelines for lodging of the administrative record.

14. S-CV-0043714 IN RE PETITION OF E. OLIVAREZ

The petition for approval of the transfer of structured settlement payments is denied. The petition and supporting declarations do not sufficiently establish the transfer is in the best interest of the transferor, Erikka Olivarez. Mrs. Olivarez received an order from the court just last month, on October 2, 2019 in Placer Court Case No. SCV-43443, for the transfer of monthly payments totaling \$65,856.60 in exchange for a lump sum payment of \$22,500. She now seeks to transfer another 12 months of payments, totaling \$24,736.59, for a lump sum payment of \$12,500. Her supporting declaration mirrors the declaration submitted for the transfer in the other case. There is no additional explanation as to why further funds are necessary in this second proceeding. Moreover, the court is unable to make a determination that this additional transfer is in Mrs. Olivarez's best interest when these monthly payments appear to be the sole source of income for herself and her three young minor children. The court also cannot make a determination the transfer is in Mrs. Olivarez's best interest when it appears from the petition and supporting declarations that she would strongly benefit from the consultation with a legal and/or financial professional prior to engaging in any further transfers. For these reasons, the petition is denied.